



<b>Combined Authority Board</b>	Agenda Item
<b>20 September 2023</b>	<b>14b</b>

Title:	Members Access to Information
Report of:	Edwina Adefehinti, Interim Chief Officer Legal and Governance and Monitoring Officer
Lead Member:	Edna Murphy (Lead Member for Governance)
Public Report:	Yes
Key Decision:	No
Voting Arrangements:	By a majority of voting members, subject to that majority including the vote of the Mayor, or the Deputy Mayor acting in place of the Mayor.

<b>Recommendations: This committee is requested to</b>	
A	Endorse the Access to Information Protocol.
B	Approve and adopt the Protocol and delegate to the Monitoring Officer to circulate the Protocol to all members and substitutes of the Combined Authority Board, Business Board and Committees as a reference point for members.

<b>Strategic Objective(s):</b>	
The proposals within this report fit under the following strategic objective(s):	
5	Achieving Best Value and High Performance
	<i>The issue of Members being able to access the information they require to fulfil their roles effectively has been identified by the Overview &amp; Scrutiny Committee. The purpose of the Access to Information protocol is to clarify the rights of Members to access information held by the Combined Authority and set out the expectations of officers responding to requests for information.</i>

<b>1. Purpose</b>	
1.1	The purpose of this report is to set out a protocol that can be adopted by the Combined Authority to clarify the rights of members to access to information held the Combined Authority.

<b>2. Proposal</b>	
2.1	The Protocol was presented to the Overview & Scrutiny Committee on <b>18 September 2023</b> for its feedback, endorsement and comments before it is presented to the Combined Authority Board to approve before rolling out to all Members and substitutes of the Combined Authority Board, Business Board and Committees.

### 3. Background

3.1	<p>Members from the Overview and Scrutiny Committee previously expressed concerns about their ability to access information held by the Combined Authority, which would assist them in their role.</p> <p>At present the rights of a Members to request access to information held by the Combined Authority are set out in the Constitution under Section 10, Rules 10.6(<i>Additional Access for Members of the Authority</i>) and 10.7 (<i>Additional Rights of Access to Documents for Members of the Overview &amp; Scrutiny Committee</i>)</p> <p>Given the comments from Overview &amp; Scrutiny members, it has become apparent that there is a lack of clarity amongst Members generally on their rights to access information. As such it was decided that an Access to Information Protocol should be created to clarify the existing access arrangements available in the Council's Constitution. <b>A draft of the Protocol is attached as Appendix A to this report.</b></p>
3.2	<p>An Overview &amp; Scrutiny committee needs access to relevant information the authority holds, and to receive it in good time, if it is to do its job effectively. This need is recognised in law, with members of Overview &amp; Scrutiny committees enjoying powers to access information.</p> <p>In particular, regulations give enhanced powers to a scrutiny member to access exempt or confidential information. This is in addition to existing rights for members to have access to information to perform their duties, including common law rights to request information and rights to request information under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.</p> <p>When considering what information scrutiny needs to carry out its work, scrutiny members and the executive should consider scrutiny's role and the legal rights that committees and their individual members have, as well as their need to receive timely and accurate information to carry out their duties effectively.</p> <p>Scrutiny members should have access to a regularly available source of key information about the management of the authority – particularly on performance, management, and risk. Where a protocol exists and scrutiny members are given support to understand it, the potential for what officers might consider unfocused and unproductive requests is reduced as members will be able to frame their requests from a more informed position.</p> <p>Officers should speak to scrutiny members to ensure they understand the reasons why information is needed, thereby making the authority better able to provide information that is relevant and timely, as well as ensuring that the authority complies with legal requirements.</p> <p>The law recognises that there might be instances where it is legitimate for an authority to withhold information and places a requirement on the executive to provide the scrutiny committee with a written statement setting out its reasons for that decision.</p>

### 4. Appendices

4.1	<b>Appendix A - Draft Members Access to Information Protocol</b>
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### 5. Implications

#### Financial Implications

5.1	There are no direct financial implications from the proposed protocol, however a failure to provide effective information to Members could inhibit their ability to scrutinise decisions and ensure effective decision making in line with the principles of best value.
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#### Legal Implications

6.1	The Protocol has been written having regard to relevant legislation and case law, as outlined in the introduction of the Protocol. It has also been informed by guidance produced by the Local Government Association and the Centre for Governance & Scrutiny.
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6.2	<p>Section 10 of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 provides additional rights of access to documents for members of overview and scrutiny committees</p> <p>(1) <i>Subject to paragraph (3), a member of an overview and scrutiny committee or a sub-committee of such a committee is entitled to a copy of any document which—</i></p> <ul style="list-style-type: none"> <li>(a) <i>is in the possession or under the control of the combined authority or the mayor; and</i></li> <li>(b) <i>contains material relating to—</i> <ul style="list-style-type: none"> <li>i) <i>any business that has been transacted at a meeting of a decision-making body of that authority; or</i></li> <li>ii) <i>any decision that has been made by an individual member of that combined authority.</i></li> </ul> </li> </ul> <p>(2) <i>Subject to paragraph (3), where a member of an overview and scrutiny committee or a sub-committee of such a committee requests a document which falls within paragraph (1), the combined authority or the mayor must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the combined authority receives the request.</i></p> <p>(3) <i>No member of an overview and scrutiny committee is entitled to a copy—</i></p> <ul style="list-style-type: none"> <li>(a) <i>of any such document or part of a document as contains exempt or confidential information unless that information is relevant to—</i> <ul style="list-style-type: none"> <li>i) <i>an action or decision that that member is reviewing or scrutinising; or</i></li> <li>ii) <i>any review contained in any programme of work of such a committee or sub-committee of such a committee; or</i></li> </ul> </li> <li>(b) <i>of a document or part of a document containing advice provided by a political adviser.</i></li> </ul> <p>(4) <i>Where the combined authority or the mayor determines that a member of an overview and scrutiny committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraph (3), it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.</i></p> <p>(5) <i>In this article, references to an overview and scrutiny committee include references to a sub-committee of such a committee.</i></p>
6.3	<p>The law above does not require a document to be open to inspection if it appears to the proper officer (being the officer designated by the authority for these purposes) or that the information being sought does not contain material relating to any business that has been transacted at a meeting of a decision-making body of that authority; or any decision that has been made by an individual member of that combined authority.</p>
6.4	<p>Under common law principles members have the right to access information held by their authority where it is reasonably necessary to enable the member to properly perform their duties as a councillor. However, if the member's motive for seeing documents is indirect, improper or ulterior this may be raised as a bar to their entitlement. If a member is a member of a particular committee or sub-committee, then they have the right to inspect documents relating to the business of that committee or sub-committee. If not a member of that committee or sub-committee, the councillor would have to show good cause why sight of them is necessary to perform their duties (See <i>R v. Clerk to Lancashire Police Committee ex parte Hook</i> [1980] Q.B. 603).</p>
6.5	<p>A member must not disclose information given to them in confidence nor disclose information acquired which they believe is of a confidential nature, unless they: a) have received the consent of a person authorised to give it; or b) are required by law to do so. If information is accessed using the Freedom of Information / Environmental Information Regulations provisions the information can be regarded as public and the member may share the information with others. If on the other hand the Member has accessed the information via the provisions of the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 or the common law 'need to know' then in some cases the information may still be confidential, and the Member will be bound by confidentiality. In that case Members should not publish or otherwise disclose the information to a third party.</p>
Public Health Implications	
7.1	None directly

Environmental & Climate Change Implications	
8.1	None Directly
Other Significant Implications	
9.1	None Directly
Background Papers	
10.1	None